

IN THE
Supreme Court of the United States
OCTOBER TERM, 1978

No. **78-1056**

HAZEL RUTH LOGAN, et al.,

Appellants.

v.

W. E. STRICKLAND, Comr., et al.,

Appellees.

ON APPEAL FROM THE
SUPREME COURT OF GEORGIA

JURISDICTIONAL STATEMENT

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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-

HAZEL RUTH LOGAN, et al, Appellants

v.

W.E. STRICKLAND, Comr., et al, Appellees

ON APPEAL FROM THE SUPREME COURT OF GEORGIA

JURISDICTIONAL STATEMENT

Appellants, Hazel Ruth Logan, Individually, Grady Moss, Individually, Yellow Jacket Market, Inc., H. W. Smith, Individually, Jet Stop Markets, Inc., and Emory B. Bazemore, Individually, appeal from the final judgment of the Supreme

Court of Georgia entered September 6, 1978, holding that Ga.L. 1978, p. 3003, which repeals the charter of the city of Mountain View, Georgia does not impair the obligation of contracts in violation of the contract clause of the United States Constitution.

OPINION BELOW

The opinion of the Supreme Court of Georgia, which appears in the Appendix hereto, p. 1a, *infra*, is reported at 242 Ga. 163 (SE2d)(1978).

JURISDICTION

The judgment of the Supreme Court of Georgia was entered on September 6, 1978. See p. 12a, *infra*. A Motion for Rehearing was entertained and denied by Order entered September 26, 1978. See p. 13a, *infra*. A Notice of Appeal to

this Court was filed on September 26, 1978. See p. 14a, *infra*. A 15 day extension of time in which to docket this Appeal was granted by Order of this Court dated December 22, 1978, which extended the time in which to docket this case to and including January 8, 1979; this Appeal is being docketed within the time so extended.

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(2).

QUESTION PRESENTED

Is the contract clause of the United States Constitution violated where holders of alcoholic beverage and grocery business licenses issued by a municipality have reasonably relied on its continuing existence in incurring contractual obligations, and the Georgia Legislature,

with no indication of legislative intent, abolishes the municipality by statute having immediate effect thereby causing total destruction of contractual expectation relating to alcoholic beverage licenses, and substantial and severe disruption as to grocery business licenses, and the Legislature fails to enact any of several policy alternatives available to minimize the effect of the interference with reasonable reliance interests.

CONSTITUTIONAL PROVISIONS AND STATUTES

Article 1, Section 10, Paragraph 1, United States Constitution:

"No State shall . . . pass any . . . law impairing the obligation of contracts . . ."

Ga. L. 1978, p. 3003, a local Act, approved January 20, 1978, repealed the charter of the City of Mountain View, Georgia:

"Section 1. An Act entitled 'An Act to Create and Incorporate the City of Mountain View, in the County of Clayton, Georgia, and Grant a Charter to that Municipality . . . ' is hereby repealed in its entirety."

The text of Ga. L. 1978, p. 3003, is set out in full in the Appendix, p. 8a, infra.

RAISING THE FEDERAL QUESTION

The Supreme Court of Georgia expressly rejected Appellants' constitutional claim, p. 6a, infra:

"5. The Act of the General Assembly revoking the charter of the City of Mountain View does not operate to impair the obligation of contracts claimed under by the parties in these actions in violation of state or federal Constitution."

STATEMENT OF THE CASE

Appellants Yellow Jacket Market, Inc. and Jet Stop Markets, Inc. each hold an alcoholic beverage license and a grocery license issued by the City of Mountain View, Georgia. Each of the individual appellants has an interest in the continuing operation of businesses engaged in the sale of alcoholic beverages and groceries under such licenses, and appellants H. W. Smith and Emory B. Bazemore have incurred substantial personal obligations in regard to incidents of the business operating under the licenses issued to Yellow Jacket Market, Inc. and Jet Stop Markets, Inc., respectively. In the event the constitutionality of the statute abolishing the City of Mountain View is upheld, the alcoholic beverage licenses will be terminated

and substantial contractual obligations incurred consistent with the operation of a business selling alcoholic beverages will remain to be performed.

Ga. L. 1978, p. 3003, p. 8a, *infra*, was attacked in two related actions seeking declaratory and injunctive relief filed in the Superior Court of Clayton County, and each action was dismissed by the same Order entered March 3, 1978, which granted a stay order authorizing the City of Mountain View to continue its normal operations under its charter pending final disposition. See p. 15a, *infra*. Plaintiffs in the related action, the City of Mountain View, Georgia, certain of its officials, and a citizen and voter of the City, appealed from the Order of the Superior Court of Clayton County to the Supreme Court

of Georgia. Appellants in this case also appealed to the Supreme Court of Georgia which dealt with both cases in its opinion rendered September 6, 1978. The City of Mountain View, Georgia, et al, have docketed an appeal in this Court, No. 78-1010.

THE QUESTION IS SUBSTANTIAL

The contractual obligations herein are of two distinct characters. First, the contract expectation in the exercise of the rights granted under the alcoholic beverage license itself and the concomittant expectation to the financial benefits to be derived therefrom for the duration of the license term and the duration of reasonably expected renewal terms. The opinion below rejected any

notion of a property right in an alcoholic beverage license, holding that "these licenses are not revoked as a result of the issuing authority; thereby Hornsby v. Allen 326 F.2d 605 (5th Cir. 1964) and other federal cases dealing with due process are inapposite." The Supreme Court of Georgia determined that under the circumstances of this case, that appellants had no property rights recognizable under constitutional analysis.

The second contract expectation involves the contractual obligations incurred by the appellants incident to the holding of an alcoholic beverage license and a grocery license. These include substantial obligations involving leases of premises, interest in equipment and fixtures necessary to operation of a business selling alcoholic

beverages in a high traffic location but unnecessary and highly economically disadvantageous to the operation of a business selling groceries without an alcoholic beverage license.

In Allied Structural Steel Company v. Spannus, 98 S.Ct. 2716 (1978), the Court said:

"The most recent Contract Clause case in this Court was United States Trust Co. v. New Jersey, 431 U.S. 1, 97 S.Ct. 1505, 52 L.Ed.2d 92. In that case, the Court again recognized that although the absolute language of the Clause must leave room for 'the essential attributes of sovereign power,' id., at 435, necessarily reserved by the States to safeguard the welfare of their citizens,' id., at 21, 97 S.Ct. at 1517, that power has limits

when its exercise effects substantial modifications of private contracts. Despite the customary deference courts give to state laws directed to social and economic problems, '(l)egislation adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption.'"

Id. at p. 2722.

"In applying these principles to the present case, the first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. Minimal alteration of contractual obligations may

end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.

"The severity of an impairment of contractual obligations can be measured by the factors that reflect the high value the Framers placed on the protection of private contracts. Contracts enable individuals to order their personal and business affairs according to their particular needs and interest. Once arranged, those rights and obligations are binding under the law, and the parties are entitled to rely on them."

Id. at 2723.

In enacting the statute complained of, the Georgia Legislature expressed

no legislative intent whatever. See p. 8a, *infra*, so that analysis of legislative intent would appear to be reduced to mere speculation; however, the fact that the act was given immediate effect is so unreasonable on its face in the context of abolition of a city that the usual presumption of legislative good faith should not be indulged.

The Georgia Legislature failed to select any of several policy alternatives available to minimize the effect of abolition of the City upon holders of business licenses. One such alternative is to provide for a grace period to allow for adjustment to the new governmental structure and to minimize losses. A second alternative is to provide for automatic issuance of

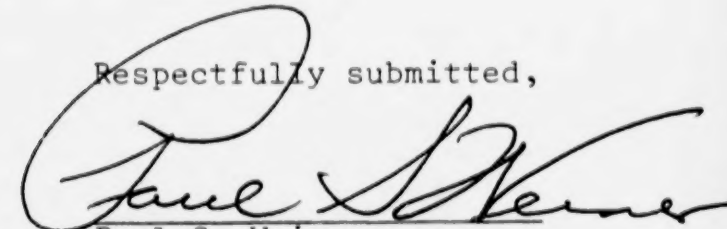
licenses by the new governing authority, and renewal of such licenses for a reasonable period. A third alternative is to compensate business license holders for actual losses suffered in reasonable reliance upon the continuing existence of the City payable from funds in the City treasury available after discharge of every other class of legal debt.

The Georgia Legislature failed to take into account, even in the most minimal way, reasonable reliance interests in the continuing existence of the City in enacting Ga.L. 1978, p. 3003, thereby violating the Contract Clause; and the Supreme Court of Georgia erred in upholding the validity of the Statute as against an attack under the Contract Clause.

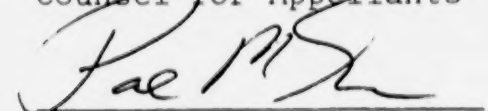
CONCLUSION

For these reasons, this Court should note probable jurisdiction of this Appeal.

Respectfully submitted,



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APPENDIX A

33622. CITY OF MOUNTAIN VIEW et al. v.
CLAYTON COUNTY et al.

33623. BOLTON v. CITY OF MOUNTAIN VIEW et al.
33625, 33626. LOGAN et al. v. STRICKLAND et al.;
and vice versa.

UNDERCOFLER, Presiding Justice.

Georgia L. 1978, p. 3003, a local Act, approved January 20, 1978, repealed the City of Mountain View's charter. Ga. L. 1956, p. 2518. Officials of Mountain View and persons holding city alcoholic beverage licenses brought suits challenging the validity of the 1978 Act. They contend that (1) the publisher's affidavit certifying the publication of notice of intention to introduce into the General Assembly local legislation to repeal Mountain View's charter does not comply with the requirements of the Georgia Constitution, (2) a city charter may not be repealed without a referendum, (3) a city charter may not be repealed by a local Act, (4) the repeal of a city charter is prohibited by the "home rule" provisions of the Georgia Constitution, and (5) the 1978 Act repealing Mountain View's charter impairs the obligation of contracts. The trial court held the 1978 Act valid. We affirm.

1. Appellants argue that the publisher's affidavit¹

¹ The Affidavit of Publication attached to the

attached to the 1978 enrolled Act does not comply with the Georgia constitutional mandate² because it failed to state (1) that the notice was published "as provided by law," (2) that the News/Daily is a newspaper in which sheriff's advertisements for the locality are published, and (3) the year of the first two dates of publication, to wit: "December 20, 27," is not shown.

enrolled bill and made a part of the statute reads as follows: "State of Georgia, County of Clayton. Personally appeared before the undersigned Jim Wood, Publisher, who on oath says that he is Publisher of News/Daily, and that the legal advertisement which appears below was published in said newspaper on the following dates: December 20, 27 and January 3, 1978. Jim Wood (Seal), /s/ Jim Wood, Publisher."

"Notice of Intention to Introduce Local Legislation. Notice is hereby given that there will be introduced at the regular 1978 session of the General Assembly of Georgia, a bill to repeal the Act incorporating the City of Mountain View in the County of Clayton, Georgia, approved February 23, 1956 (Ga. L. 1956, p. 2518), as amended, and for other purposes.

This 20th day of December, 1977.

/s/ Rudolph Johnson
Representative, 72nd District
/s/ William J. Lee
Representative, 72nd District
/s/ Jim Wood
Representative, 72nd District
/s/ Jimmy Benefield
Representative, 72nd District
/s/ Terrell A. Starr
Senator, 44th District"

² "No local or special bill shall be passed, unless notice of the intention to apply therefor shall have been published in the newspaper in which the Sheriff's advertisements for the locality affected are published, once a week for three weeks during a period of sixty days immediately preceding its introduction into the General Assembly. No local or special bill shall become law unless

An affidavit of publication of notice of intention to introduce a local Act into the General Assembly is essential to its validity. *Smith v. McMichael*, 203 Ga. 74 (45 SE2d 431) (1947). It certifies that the local people were notified of the proposed legislation as required by law. However, no particular form of affidavit is required. It suffices if a reasonable interpretation shows compliance with the constitutional provision. In our opinion the affidavit here is adequate. The newspaper in which the notice appeared is named. The publisher certified that the notice was a "legal advertisement" which is tantamount to certifying that the newspaper was the official organ of the county in which sheriff's advertisements are published. The notice is dated December 20, 1977, a Tuesday. The publisher certified the notice was published "December 20, 27 and January 3, 1978." We take judicial notice that these dates are successive Tuesdays. It is apparent that December 20 is December 20, 1977, the date of the notice itself, and that the notice was published again the following Tuesday, December 27, 1977, and finally the following Tuesday, January 3, 1978, after which the Act was introduced into the General Assembly on January 9, 1978. *Cain v. Lumpkin County*, 229 Ga. 274 (190 SE2d 910) (1972). Appellants do not claim the affidavit is fraudulent. We find the affidavit shows publication in the newspaper in which sheriff's advertisements for the locality affected are published once a week for three weeks during a period of sixty days immediately preceding its introduction into the General Assembly "as provided by law." The constitutional provision has been satisfied here.

2. Appellants argue the General Assembly does not have the power to abolish the charter of a municipality without a referendum submitted to the people of the area affected because this violates the constitutional provision

there is attached to and made a part of said bill a copy of said notice certified by the publisher, or accompanied by an affidavit of the author, to the effect that said notice has been published as provided by law. . . Ga. Const., 1976, Art. III, Sec. VII, Par. IX (Code Ann. § 2-1309).

prohibiting the abolishing of elective office during term.³ This provision was intended to correct an evil often practiced in this state, i. e., the use of local legislation specifically directed to amending or abolishing the term of a specified elective office to remove an incumbent or prolong his tenure. See Records of the Constitutional Commission, 1943-44, Vol. I, pp. 351-352. This language may not be extended by implication to place a restraint upon the general power of the General Assembly to create or abolish the charters of municipal corporations, either by local or general law.

"... [M]unicipalities are creatures of the legislature, and their existence may be established, altered, amended, enlarged or diminished, or utterly abolished by the legislature." *Troup County Elec. Membership Corp. v. Ga. Power Co.*, 229 Ga. 348, 352 (4) (191 SE2d 33) (1972) and *cits.*

3. Appellants argue that the General Assembly has provided for the self-government of municipalities by general law, as authorized by the Georgia Constitution⁴ and it may not now legislate in this area by local Act. We do not agree. Appellants overlook Ga. L. 1965, p. 298 (Code Ann. § 69-1016) wherein the General Assembly specifically reserved the right to dissolve municipalities

³"... No office to which a person has been elected shall be abolished, nor the term of the office shortened or lengthened by local or special bill during the term for which such person was elected unless the same be approved by the people of the jurisdiction affected in a referendum on the question. . ." Ga. Const. 1976, Art. III, Sec. VII, Par. IX (Code Ann. § 2-1309).

⁴"The General Assembly is authorized to provide by law for the self-government of municipalities and to that end is hereby expressly given the authority to delegate its powers so that matters pertaining to municipalities may be dealt with without the necessity of action by the General Assembly. Any powers granted as provided herein shall be exercised subject only to statutes of general application pertaining to municipalities." Ga. Const., 1976, Art. IX, Sec. III, Par. I (Code Ann. § 2-6001).

by local Act.⁵ *Lee v. City of Jesup*, 222 Ga. 530 (150 SE2d 836) (1966). See also *State of Ga. v. Golia*, 235 Ga. 791 (222 SE2d 27) (1976); *Bruck v. City of Temple*, 240 Ga. 411 (240 SE2d 876) (1977). Ga. L. 1947, p. 1545 (Code Ann. § 69-105), is inapposite. It authorizes the superior court to dissolve municipalities which have not functioned for a period of ten years.

4. There is no merit in appellants' argument that the "Supplementary Home Rule" provision of the Georgia Constitution⁶ vests municipalities with almost autonomy and the General Assembly is powerless to withdraw the powers granted by the Constitution.

This provision provides uniformity of certain powers of municipalities, not autonomy. The General Assembly may not remove these powers in a random fashion. However, it does not operate to abolish the General Assembly's plenary power to create and dissolve municipal corporations. See *City of Atlanta v. Myers*, 240 Ga. 261 (240 SE2d 60) (1977).

5. The Act of the General Assembly revoking the charter of the City of Mountain View does not operate to impair the obligation of contracts claimed under by the parties in these actions in violation of state or federal

⁵"No municipality shall be incorporated, dissolved, merged or consolidated with any other municipality or municipal boundaries changed, except by local Act of the General Assembly or by such methods as may be provided by general law."

⁶"Except as otherwise provided in this Paragraph as to planning and zoning, nothing contained within this Paragraph shall operate to prohibit the General Assembly from enacting general laws relative to the above subject matters or to prohibit the General Assembly by general law from regulating, restricting or limiting the exercise of the above powers, but, the General Assembly shall not have the authority to withdraw any such powers. The General Assembly shall act upon the above subject matters only by general law." Ga. Const., 1976, Art. IX, Sec. IV, Par. II (Code Ann. § 2-6102).

Constitution. The offices of city judge, clerk and chief of police are public offices authorized under the charter of the City of Mountain View. The right of an incumbent to an office depends upon the law under which he holds. If the law is capable of being repealed, the right of the officer is gone. See *City Council of Augusta v. Sweeney*, 44 Ga. 463, 466 (1870); *Smith v. Abercrombie*, 235 Ga. 741, 749 (221 SE2d 802) (1975). Also, we have consistently held that holders of alcoholic beverage licenses do not acquire property rights when granted a beverage license under the police power. *McKown v. City of Atlanta*, 184 Ga. 221, 222 (190 SE 571) (1937). Such licenses also do not acquire the status of vested property rights as argued by appellants. See *Thacker v. Morris*, 196 Ga. 167 (26 SE2d 329) (1943). These licenses are not revoked as the result of an act of the issuing authority; therefore, *Hornsby v. Allen*, 326 F2d 605, and other federal cases dealing with due process issues are inapposite.

Judgment affirmed in Cases Nos. 33622 and 33625; cross appeals in Cases Nos. 33623 and 33626 dismissed. All the Justices concur.

ARGUED JUNE 12, 1978 — DECIDED SEPTEMBER 6, 1978 —
REHEARING DENIED SEPTEMBER 26, 1978 IN CASES NOS. 33622 AND 33625.

Repeal of municipal charter; constitutional question.
Clayton Superior Court. Before Judge Morgan, Senior Judge.

Wesley R. Asinof, for appellants (Case No. 33622).

Arthur K. Bolton, Attorney General, Michael J. Bowers, Senior Assistant Attorney General, Glaze, McNally & Glaze, George E. Glaze, Kirby A. Glaze, John R. McCannon, for appellees (Case No. 33622).

Michael J. Bowers, Senior Assistant Attorney General, Arthur K. Bolton, Attorney General, for appellant (Case No. 33623).

George E. Glaze, John R. McCannon, Wesley R. Asinof, Clarence L. Leathers, Jr., for appellees (Case No. 33623).

Douglas N. Peters, Emory B. Bazemore, for appellants (Case No. 33625).

John R. McCannon, George E. Glaze, Arthur K.

Bolton, Attorney General, Michael J. Bowers, Senior Assistant Attorney General, for appellees (Case No. 33625).

Arthur K. Bolton, Attorney General, Michael J. Bowers, Senior Assistant Attorney General, for appellants (Case No. 33626).

George E. Glaze, John R. McCannon, Douglas N. Peters, Emory B. Bazemore, for appellees (Case No. 33626).

APPENDIX "B"

LOCAL AND SPECIAL
ACTS AND RESOLUTIONS
OF THE
GENERAL ASSEMBLY
of the
STATE OF GEORGIA

1978

City of Mountain View — Charter Repealed
No. 757 (House Bill No. 1228).

AN ACT

To repeal an Act entitled "An Act to create and incorporate the City of Mountain View, in the County of Clayton, Georgia, and grant a charter to that municipality under that name and style; to prescribe and define the corporate limits thereof; to provide a municipal government for said city, and to declare the rights, powers, privileges and liabilities of said corporation; to authorize said city to levy and collect a tax for purposes authorized herein; to authorize the construction of waterworks, sewers, streets, parks, and to provide for the payment of the same; to provide for granting franchises to persons, firms or corporations

for construction and maintenance of public utilities; to declare and define the police powers of said city; to declare and define the duties and powers of the officers of said city; to provide for the election of a mayor and council of said city; to provide for passage of ordinances and granting licenses for the conduct of business; to provide for a referendum before this Act becomes effective; and for other purposes.", approved February 23, 1956 (Ga. Laws 1956, p. 2518), as amended by an Act approved April 21, 1967 (Ga. Laws 1967, p. 3323); an Act approved April 25, 1969 (Ga. Laws 1969, p. 3636) and by an Act approved March 31, 1976 (Ga. Laws 1976, p. 3970); to repeal conflicting laws; and for other purposes.

Be it enacted by the General Assembly of Georgia:

Section 1. An Act entitled "An Act to create and incorporate the City of Mountain View, in the County of Clayton, Georgia, and grant a charter to that municipality under that name and style; to prescribe and define the corporate limits thereof; to provide a municipal government for said city, and to declare the rights, powers, privileges and liabilities of said corporation; to authorize said city to levy and collect a tax for purposes authorized herein; to authorize the construction of waterworks, sewers, streets, parks, and to provide for the payment of the same; to provide for granting franchises to persons, firms or corporations for construction and maintenance of public utilities; to

declare and define the police powers of said city; to declare and define the duties and powers of the officers of said city; to provide for the election of a mayor and council of said city; to provide for passage of ordinances and granting licenses for the conduct of business; to provide for a referendum before this Act becomes effective; and for other purposes.", approved February 23, 1956 (Ga. Laws 1956, p. 2518), as amended by an Act approved April 21, 1967 (Ga. Laws 1967, p. 3323), an Act approved April 25, 1969 (Ga. Laws 1969, p. 3636) and by an Act approved March 31, 1976 (Ga. Laws 1976, p. 3970), is hereby repealed in its entirety.

Section 2. All laws and parts of laws in conflict with this Act are hereby repealed.

Notice

Notice of Intention to Introduce Local Legislation.

Notice is hereby given that there will be introduced at the regular 1978 session of the General Assembly of Georgia, a bill to repeal the Act incorporating the City of Mountain View in the County of Clayton, Georgia, approved February 23, 1956 (Ga. Laws 1956, p. 2518), as amended, and for other purposes.

This 20th day of December, 1977.

/s/ Rudolph Johnson

Representative,
72nd District

/s/ William J. Lee

Representative,
72nd District

/s/ Jim Wood

Representative,
72nd District

/s/ Jimmy Benefield

Representative,
72nd District

/s/ Terrell A. Starr

Senator, 44th District

Georgia, Clayton County.

Personally appeared before the undersigned Jim Wood, Publisher, who on oath says that he is the Publisher of News/Daily, and that the legal advertisement which appears above was published in said newspaper on the following dates: December 20, 27, 1977 and January 3, 1978.

/s/ Jim Wood

Publisher

Sworn to and subscribed before me,
this 4th day of January, 1978.

APPENDIX C

33625

SUPREME COURT OF GEORGIA

Atlanta, September 6, 1978

The Honorable Supreme Court met
pursuant to adjournment.

The following was rendered:

Hazel Ruth Logan, et al v.

W. E. Strickland, Comr., et al

This case came before this court
upon an appeal from the Superior Court
of Clayton County, and, after argument
had, it is considered and adjudged that
the judgment of the court below be af-
firmed. All the Justices concur.

APPENDIX D

33625

SUPREME COURT OF GEORGIA

Atlanta, September 26, 1978

The Honorable Supreme Court met pur-
suant to adjournment.

The following order was passed:

Hazel Ruth Logan, et al v.

W. E. Strickland, Comr., et al

Upon consideration of the motion for
rehearing filed in this case, it is ordered
that it be hereby denied.

APPENDIX E

NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES

Notice is hereby given that the Appellants, above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court For The State of Georgia affirming the decision of the Superior Court of Clayton County in holding that Georgia Laws, 1978, Page 3003, approved January 20, 1978, repealing the Charter for the City of Mountain View was not in contravention of the United States Constitution entered in this action on September 6, 1978.

This appeal is taken pursuant to 28 U.S.C. Section 1257(2).

/s/ Douglas N. Peters
DOUGLAS N. PETERS
Attorney for Appellants

/s/
EMORY B. BAZEMORE
Attorney for Appellants

APPENDIX F
ORDER

This Court has found that Act No. 757 of the 1978 Session of the General Assembly, which had the effect of repealing the Act which created the City of Mountain View, is not unconstitutional for any reason advanced by the Plaintiffs in the above-referenced cases. As a result, unless that order is appealed to a higher tribunal, the City of Mountain View will cease to exist upon the entering of the final judgment in these cases. Such an action obviously will affect a great number of persons, notably the residents of the City of Mountain View. Therefore, in an effort to maintain the status quo until such time as an appeal from that order is filed, and, if an appeal is in fact filed, until such time as the appropriate appellate court of this State has finally ruled as to the validity of Act No. 757, it is the intent of this Court to enjoin the Defendants in a manner so as to preserve the status quo between the parties to these suits.

Therefore, subject to the conditions imposed below, this Court herewith enjoins the Defendants in each of the above-referenced cases from interfering with the ordinary functions of the operation of the City of Mountain View for a period of ten days after the entry of this order.

If at the end of the ten day period, the plaintiffs have not filed with this Court a notice of appeal from this Court's decision in the above-referenced cases, this injunction shall stand dissolved.

If within the ten days, the Plaintiffs have filed with this Court their notice of appeal to the appropriate state appellate court, the injunction granted above shall continue in force and effect until such time as the proper state appellate court has entered its final determination as to the constitutionality of Act No. 757 of the 1978 Session of the General Assembly of Georgia. Pursuant to this injunction, the Defendants are enjoined and restrained subject to the time constraints noted above, from interfering with the Plaintiffs in the carrying out of their normal functions of government of that portion of Clayton County set apart as the City of Mountain View, Georgia by Ga. L. 1956, p. 2518, as amended. The normal functions of government are hereby defined as being police protection, fire protection, the operation of the City Hall, the operation of the Recorder's Court, the enforcement of municipal ordinances, meetings of the City Council, garbage and refuse pick-up, payment of salaries to municipal employees, the furnishing of services to the citizens of the City and all other governmental functions normally performed by the municipality. Moreover, during the pendency of this injunction, all valid business licenses, including alcoholic beverage licenses previously issued shall remain in force and effect until they expire by their terms, and plaintiffs are authorized to carry out and perform such duties as have been conferred upon them by Ga.L. 1956, p. 2518, as amended and all such acts being approved prior to January 20, 1978.

As a condition to the grant of this injunction, those Plaintiffs in the two suits who are officials or employees of the City of Mountain View are prohibited from engaging in or carrying out any function which would not serve to preserve the status quo between the parties during the pendency of the injunction. Specifically, the Plaintiffs are prohibited from dissipating any municipal assets or incurring any debt which either by the frequency of occurrence or by its size constitutes a significant departure from the City's past practices. The Plaintiffs are prohibited from disbursing any monies to their officers and employees other than those salaries which are presently being paid.

As noted, it is the specific intent of this Court, in granting this injunction, to maintain the status quo between the Plaintiffs. Further, this injunction is conditioned upon the Plaintiffs committing no act which will operate to thwart the Court's expressed intent.

It is also the intent of the Court that Bennett G. Cloy shall continue to serve as the representative of this Court for the purpose of acting as its representative to audit and inventory all property, records, files, ledgers, minute books, checkbooks, bank records, bank accounts, audit reports and any and all other records relating to the finances or monetary income disbursed by the City of Mountain View. Said representative shall have the authority to examine any of these documents at any time he deems necessary. This injunction is further conditioned upon the Plaintiff's

providing said representative access to such documents.

It is the intent of this order that the Final Judgment and Decree of the Court entered this date in the foregoing cases, and the effect of Act No. 757 of the 1978 session of the General Assembly may have upon the Charter of the City of Mountain View be stayed and superseded until the Final Judgment of the proper Appellate Court of this State.

IT IS SO ORDERED, this 3rd day of March, 1978.

/s/ HUBERT C. MORGAN
HON. HUBERT C. MORGAN,
Judge Emeritus
Clayton Superior Court
